

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2894 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

VD GADHVI &ORS

Versus

STATE OF GUJARAT AND ORS.

Appearance:

MR YS LAKHANI for Petitioners
SERVED for Respondent No. 1
MR DA BAMBHANIA for Respondent No. 2
UNSERVED for Respondent No. 5

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/06/97

ORAL JUDGMENT :

Petitioners are the employees of the State Government in the Land Records Department. This petition has been preferred for a declaration that the seniority

of the petitioners is governed by the principle of continuous officiation. The petitioners also seek a declaration that it is not obligatory for the petitioners to pass Land Records Qualifying Examination (hereinafter referred to as LRQ Examination) as a condition-precedent for further promotion to the post of Senior Clerk in class-III services. Earlier similar issue was raised by certain employees of the Land Records Department before the Gujarat Civil Services Tribunal, Gandhinagar. The said Tribunal, under its judgment and order dated 17th January, 1983 passed in Appeal No. 94/81 has held that even for promotion to the post of Senior Clerk in the Land Records Department, one has to pass LRQ Examination as a condition-precedent.

2. The learned advocate Mr. Pandya has appeared for the petitioners. He has relied upon the Land Records Department (General State Service) Class-II Officers Recruitment Rules, 1970. He has particularly relied upon Rule 3 (ii) and has submitted that recruitment to Class-II posts in the Land Records Department can be made by promotion from amongst persons of proved merits and efficiency in the subordinate services of the Land Record Department who have passed the LRQ Examination. He has thus contended that it is only for promotion to Class-II cadre that a person belonging to a subordinate service in the Land Records Department is required to pass LRQ Examination. However, no such condition is prescribed under the Recruitment Rules for appointment to Class-III services in the Land Records Department. He has, therefore, contended that the petitioners can not be denied promotion as Senior Clerks on the ground that they have not passed LRQ Examination. Mr. Pandya has also relied on the Subordinate Land Records Class-III Service Seniority Rules, 1980, and has submitted that the seniority in the combined group of Surveyors and Clerks in the Land Records Department shall be determined on the basis of the date of entry in service.

3. Claim made by the petitioners has been contested by the respondents. The learned AGP Mr. Gharania has appeared for the respondents and has contended that in view of the provisions contained in the Land Records Qualifying Examination Rules, 1970, all persons serving in lower Division of the subordinate services in the Land Records Department have to pass LRQ Examination as a condition-precedent for promotion to the post in the subordinate Land Records Department. The above referred Rules are framed by the Government in exercise of the

powers conferred upon it by the proviso to Article 309 of the Constitution and are, thus, statutory and legislative in nature. Rule 2 (k) defines ' Subordinate Land Records Service' as under :

" 'Subordinate Land Records Service' includes Clerks, Surveyors, Maintenance Surveyors, Nimtandars, District Surveyors and Head Surveyors".

The said Rule has since been amended in the year 1984 and the substituted Rule 2(k) reads as under :

" 'Subordinate Land Records Service' includes Clerks, Surveyors, Senior Clerks, Maintenance Surveyors, Nimtandars, District Surveyors and Head Surveyors "

Mr. Gharania has also relied on the Land Records Establishment Manual of the Gujarat State. Chapter-IX of the said Manual contains rules for appointment etc. of the District Inspectors and Land Record staff subordinate to them. Paragraph -1 of the said Chapter enumerates the class of officers who constitute subordinate service of the Land Records Department. The posts of Clerks, Surveyors and Typists etc. are enumerated at Sr.Nos. 1 to 17 of the said paragraph. While the posts of Consolidation Circle Inspectors, Maintenance Surveyors, District Surveyors, Senior Clerks, Head Surveyors etc. are included at Sr.No. 18 onwards. Paragraph-2 provides that appointment to posts at Sr.Nos. 1 to 17 shall be made by nomination and appointment to the posts at Sr.Nos. 18 to 29 shall be made by promotion from the incumbents of the posts at Sr.Nos. 1 to 17 according to their seniority. The post of Senior Clerk is included at Sr.No.25 in paragraph-1. Thus, the appointment to the post of Senior Clerk can be made by promotion of persons belonging to the cadres at Sr.Nos. 1 to 17. Reading Rule 2(k) of LRQ Examination Rules, 1970 with Chapter-IX of the above referred Manual, it is evident that the post of Senior Clerk in the Land Records Department is part of

the subordinate services of the Department, and can be filled in by promotion from amongst the persons belonging to the lower Division of the subordinate services of the Department. Rules 4 and 5 of the LRQ Examination Rules read as under :

4(1) Where any person belonging to the lower division of the subordinate Land Records Service fails to pass the Examination within the prescribed number of chances and during the prescribed period shall lose his seniority and till he passes the Examination under Rule-5 he shall not be eligible for promotion to the higher post and confirmation therein.

(2) Where any direct recruit fails to pass the examination within the prescribed chances during the prescribed period, he shall be discharged from service.

(3) Where a person belonging to the lower division of the subordinate Land Records Services passes the Land Records Qualifying Examination within the prescribed chances during the prescribed period, he shall retain his original seniority even if a person junior to him has passed the said examination and promoted to the higher post earlier than he ".

5(1) Where a person who has passed the Departmental Examination or who is exempted from passing the same is not available for promotion to the higher post, a person whose chances to pass the examination are not exhausted under Rule-3, may be promoted to officiate in the higher post subject to the condition that he shall be reverted on the availability of a person who has so passed the examination or on his failure to pass the examination within the prescribed chances during the prescribed period, whichever event occurs earlier.

(2) The person permitted to appear at the examination under the proviso second, third and fourth to sub-rule (2) of Rule-3, shall not rank in seniority higher than those who have already passed the relevant examination under the old

rules and who continue on appointed day on the post to which they were promoted before that day "

Above Rule-4 provides for two contingencies. First when a person belonging to the lower division in the subordinate Land Record Services fails to pass the examination within the prescribed number of chances and during the prescribed period, he would forfeit his right to further promotion to higher post and confirmation therein. Second such a person would lose the seniority.

4. On combined reading of above Rules 4 and 5, it is apparent that a person belonging to the lower division in the subordinate Land Records Services who has passed LRQ Examination shall be preferred while making promotion to the higher post to the one who has not passed such examination. Only in case a person who has passed LRQ Examination or who is exempted from passing the same is not available for promotion to the higher post, a person whose chances to pass the examination are not yet exhausted may be promoted to officiate in the higher post. Hence, in my view, the claim made by the petitioners is contrary to the above referred Rules and is required to be rejected. All the persons belonging to the lower division in the Subordinate Land Record Services have got to pass LRQ Examination prescribed under the said Rules as a condition-precedent for promotion to a higher post in class-III services of subordinate Land Records Services also.

5. Mr. Pandya has relied upon the judgments of the Supreme Court in the matter of Keshav Chandra Joshi & others VS Union of India & Others (AIR 1991, SC, 284) and K. Rajaiah VS State of Andhra Pradesh & Others (AIR 1987, SC 2005) In the matter of Keshav Chandra Joshi (Supra), the court was considering the effect of adhoc appointment followed by substantive appointment on the seniority of an incumbent. The court held that the adhoc appointment made on stop-gap basis can not be considered for the purpose of seniority. In the matter of K. Rajaiah (Supra), the court was considering the seniority of a Police Officer who was appointed by direct recruitment to a different cadre under the same department. The court rejected the claim of the Police Officer for determining his seniority on the basis of his

earlier appointment in the other cadre. On the facts of the present case, neither of the above referred judgments shall apply.

65. Mr. Pandya has also relied upon the Subordinate Land Records Class-III Services Seniority Rules, 1980. Rule 2 of the said Rules reads as under :

2(1) The seniority in the combined group of Surveyors and Clerks appointed after 1st May 1960 and before 31st March 1977 shall be fixed according to -

(i) the date of entry in service ;

(ii) Pay;

Provided that in the case of persons having the same date of entry in service and equal pay, the person who is senior in merit list of recruitment shall be considered senior ".

In view of the aforesaid statutory rules, the combined seniority of the Surveyors and Clerks appointed in the Land Records Department after 1st May 1960 and before 31st March 1977 shall be determined in accordance with the said Rules. However, neither Mr. Pandya nor Mr. Gharania is aware whether the present petitioners have been appointed prior to 31st March 1977 or thereafter. Neither of them is aware whether there are any rules framed for determination of seniority of persons belonging to Class-III services of the Land Records Department appointed after 31st March 1977. For want of the adequate material on the record, the petitioners claim that their seniority be determined on the basis of continuous officiation can not be upheld. The seniority shall be governed by the statutory Rules, if any.

7. In view of the above discussion, the petition fails and is dismissed. Rule is discharged.
